



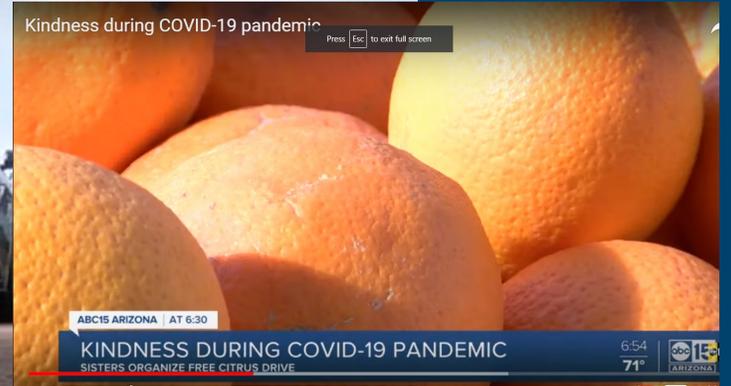
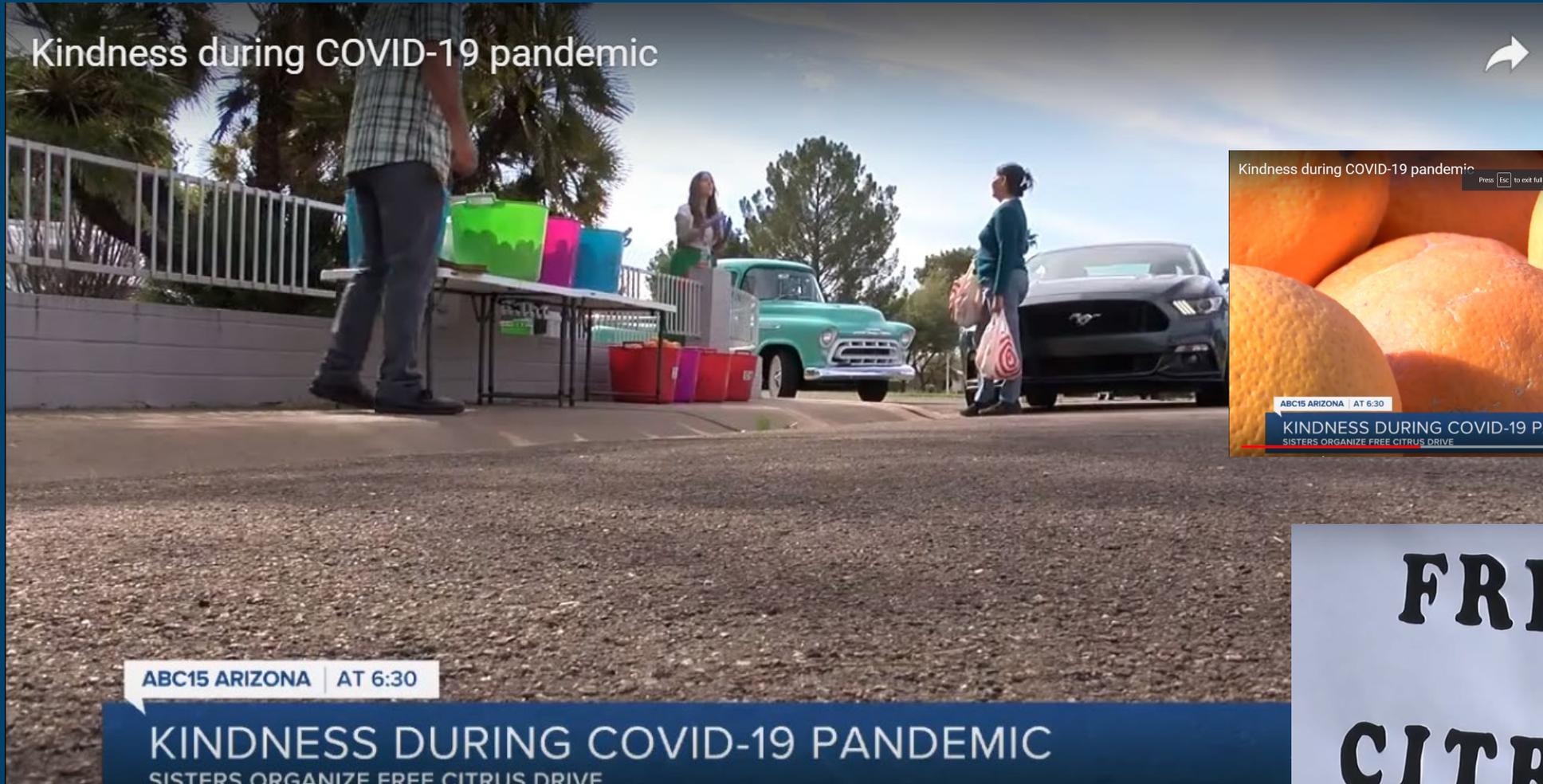
KIRTON | McCONKIE

COVID-19 Employer Webinar
**Understanding Employment
Options & Legislative Updates**

Believe

in something better.

Kindness during COVID-19 pandemic



ABC15 ARIZONA | AT 6:30

KINDNESS DURING COVID-19 PANDEMIC
SISTERS ORGANIZE FREE CITRUS DRIVE

FREE
CITRUS

Scottsdale Free Drive Through



Families First Coronavirus Response Act

Ryan Frazier, Kirton McConkie





Basics of the Act

Families First Coronavirus Response Act (“FFCRA”)

➤ Contains significant provisions for employers

- H.R. 6201
- Signed into law on March 18, 2020

➤ Applicability

- Applies to employers with fewer than 500 employees
- Takes “effect not later than 15 days after the date of enactment”
 - April 2, 2020?

➤ Notice

- Secretary of Labor will provide Notice no later than March 25, 2020
- Must be posted in a conspicuous place



Basics of the Act

Families First Coronavirus Response Act

➤ Paid Sick Leave

- Emergency Paid Sick Leave Act

➤ Emergency Family and Medical Leave

- Emergency Family and Medical Leave Expansion Act

➤ Tax Credits for Paid Sick and/or Paid FMLA Leave



FFCRA

Emergency Paid Sick Leave Act

➤ Applicability

- Requirement Applies to Employers with fewer than 500 employees

➤ Requirement

- Must provide up to two (2) weeks of paid sick leave to employees who are unable to work due to various issues related to covid-19
- This is in addition to any sick leave already provided



FFCRA

Emergency Paid Sick Leave Act

➤ Duration of Leave

- Limited to 80 hours (2 weeks) for full-time employees
- Part-time employees entitled to leave equal to the average number of hours worked during prior two (2) week periods

➤ Retaliation prohibited

- Retaliation Against employee who seeks to use or uses benefits provided by the act is prohibited



FFCRA

Emergency Paid Sick Leave Act

▶ Paid Sick Leave at Regular Rate

- Employers to which the Act applies must provide employees with up to two (2) weeks of sick leave that is paid at the employee's regular rate if the employee is unable to work (or telework) because the employee:
 - Is subject to a Federal, State or local quarantine or isolation order related to COVID-19;
 - Has been advised by a health care provider to self-quarantine due to concerns about COVID-19; or
 - is experiencing symptoms of COVID-19 and needs to obtain a medical diagnosis.



FFCRA

Emergency Paid Sick Leave Act

➤ Amount of leave for these reasons

- Amount of Leave capped at \$511 per day for following 3 reasons:
 - a Federal, State or local quarantine or isolation order related to COVID-19;
 - A health care provider has advised the employee to self-quarantine due to concerns about COVID-19; or
 - The employee is experiencing symptoms of COVID-19 and needs to obtain a medical diagnosis.
- Aggregate limit of \$5,111



FFCRA

Emergency Paid Sick Leave Act

▶ Paid Sick Leave at Two-Thirds Regular Rate

- Employers to which the Act applies must provide employees with up to two (2) weeks of sick leave that is paid at two-thirds (2/3) of the employee's regular rate if the employee is unable to work (or telework) because the employee :
 - Takes leave to care for an individual who is subject to a quarantine or isolation order related to COVID-19 or has been advised to self-quarantine because of COVID-19;
 - Takes leave to care for the employee's son or daughter (under 18 years old) if the child's school or place of care is closed or is unavailable; or
 - Experiences any substantially similar condition as may be specified by the Secretary of Health and Human Services.



FFCRA

Emergency Paid Sick Leave Act

► Amount of Leave for these reasons

- Amount of Leave capped at \$200 per day for following 3 reasons:
 - To care for an individual who is subject to a quarantine order or who has been advised to self-quarantine due to covid-19 concerns;
 - To care for the employee's son or daughter (under 18 years old) if the child's school or place of care is closed; or
 - The employee experiences any substantially similar condition as may be specified by the Secretary of Health and Human Services.
- Aggregate limit of \$2,000



FFCRA

Emergency Family and Medical Leave Expansion Act

► Expanded FMLA Protection

- expands the protections available under the FMLA to include
 - an “employee who is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed; or
 - the child care provider of such son or daughter is unavailable due to a public health emergency.”
- The expanded coverage may also apply to employees who have worked for as few as 30 days for the employer.



FFCRA

Emergency Family and Medical Leave Expansion Act

► FMLA Paid Leave

- First 10 days of leave taken under expanded FMLA may be unpaid
 - Employee may elect to use available sick leave or accrued vacation/personal time under this period
- Thereafter, employee is entitled to pay
 - In “an amount that is not less than two-thirds of an employee’s regular rate of pay”
 - Based upon the average hours worked in the past
 - Such payments are subject to a limit of \$200 per day with an aggregate limit of \$10,000



FFCRA

Refundable Tax Credits

► Tax Credits for Paid Sick Leave and/or Paid FMLA Leave

- Partial offset of the costs associated with sick leave
- The Act provides refundable tax credits against the employer's share of certain employment taxes
 - Old-age, survivors, and disability insurance component of payroll taxes
 - quarterly Social Security Tax payments for Sick Leave and FMLA Leave payments that are made during the subject quarter
 - Railroad retirement tax Act employment taxes also eligible for credit
- The Treasury is supposed to provide further guidance regarding this tax credit provision.



FFCRA

Refundable Tax Credits

➤ Limits on Refundable Tax Credits

- Credits are limited to \$511 per day for each employee who takes the sick leave while employee is receiving paid leave to care for himself or herself
- Credits are limited to \$200 per day for up to 10 days for each employee who takes the sick leave for caring for a family member or child whose school has closed



FFCRA

Employment Policies

➤ Employers should Update Policies

- Policies should reflect the impact of the new law
 - This is an update, not a change
 - Cannot eliminate sick leave to avoid paid sick leave under Act
- Because the law is going into effect, employers should act quickly

Considerations for Benefit Plans

Susan Grassli, GBS Benefits





Compliance

Policies and Contracts Still Govern

➤ **Protect Employee Privacy**

- Treat medical information as confidential
 - ADA, FMLA and worker's comp laws all come into play
 - Can provide general notices to employees
- HIPAA is still applicable
 - Privacy rules
 - Security rules

➤ **Review Existing Carrier Contracts**

- What are current agreements and obligations
- What changes need to be made
- Communicate with carriers about questions and changes

➤ **Follow your Internal Existing Policies and Procedures**

- Employer policies and handbooks
- ACA written measurement methods under Employer Shared Responsibility
 - Continue to track hours of service accurately
 - Apply your paid/unpaid leave section correctly



Compliance

Leaves and Loss of Coverage

► Remember Rules Affecting Loss of Coverage

- 125 Cafeteria plan election changes
 - Must experience a qualifying event consistent with the requested change to allow for the change.
- COBRA rules
 - A reduction in hours accompanied by a loss in coverage is a COBRA qualifying event.
 - Leave can create a reduction of hours but doesn't always result in a loss of coverage.

► Get Organized on Leave

- Review and amend leave policies where applicable
 - May opt to be more generous
- Determine and track type of leave for each employee
 - Regular FMLA
 - Protected FMLA
 - Emergency expanded FMLA (Families First Coronavirus Response Act)
 - Emergency Paid Sick leave (Families First Coronavirus Response Act)
 - Regular sick leave
 - Regular holiday
 - State mandated leave
 - Furlough
- Develop clear procedures and protocols for employees to communicate the need for leave.
- Update leave request forms, return-to-work policies and forms



Compliance

Other Plan Document Considerations

➤ Follow ERISA Part 1 Reporting and Disclosure Requirements

- After reviewing and updating your leave policies, where applicable
 - Update Plan Doc and SPD
 - Provide SMM (within 210 days) or SMR (within 60 days)

➤ Additional Regulatory Considerations

- Occupational Health and Safety Act (OSHA)
- Title VII of the Civil Rights Act
- Fair Labor Standards Act (FLSA)
- Affordable Care Act (ACA)
 - Reconsider if using W-2 affordability safe harbor for 2020

➤ Engage Experts for Specific Legal Advice

- Tax Professional to navigate new tax credit under the Families First Coronavirus Response Act
 - Good news, tax deadline moved from April 15 to July 15
- Employment Law attorney to navigate various individual questions and concerns and prevent issues
 - Ryan Frazier

Are employee layoffs my only option?

Joe Tate, GBS Benefits



Considerations

1. Protect your Employees and Their Families
2. Safeguard Cash
3. Mitigate your Risk
4. Protect Operations

Employees over 60?



Furlough

1. Options in extending coverage
2. Review contracts with carriers
3. Premiums a) 100% paid, b) existing split, c) arrears.
4. Sharing the burden (one in four)
5. Access to benefits of new legislation



Layoffs

1. Finality
2. Alienation of employees and broken trust
3. Definitive control of future costs
4. Certainty of downturn in all business operations



Support

Furlough communication template.

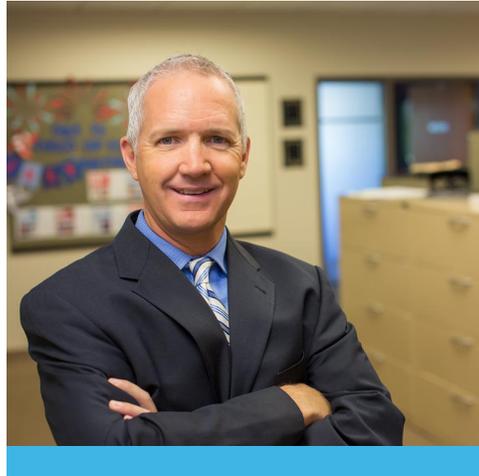
Phone support.

Navigating ongoing changes.

Discussion Panel



Ryan Frazier
Attorney, *Kirton
McConkie*



**Joe Tate, SPHR,
SHRM-SCP**
*GBS Director of HR
Consulting*



Susan L. Grassli, JD
*GBS Director of ACA &
Benefits Compliance*



Matt Kiisel
*VP of Compliance,
Director of COBRA
Administration*

Resource Library:

<https://gbsbenefits.com/covid-19-employer-resources-information/>